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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/694,905 | 10/29/2003 | Jean-Louis H. Gueret | 05725.1251-00 | 4525 |

22852 7590 10/06/2006

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| EXAMINER |
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WALCZAK, DAVID J

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| ART UNIT | PAPER NUMBER |
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3751

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/694,905 | Applicant(s) GUERET, JEAN-LOUIS H. | |
| | Examiner David J. Walczak | Art Unit 3751 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33, 35, 37-40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) 26-30, 33, 38-40 and 43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25, 31, 32, 35, 37, 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/23/06 & 7/21/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election

Applicant's election without traverse of Group I in the reply filed on 8/8/06 is acknowledged. Claims 1-25, 31, 32, 35, 37 and 42 are readable thereon and will be examined herein. Claims 38-40 and 43 are withdrawn from further consideration. Claims 26-30 and 33 remain withdrawn as per the previous restriction requirement.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 19, 21, 25 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by JP-A 2002-370940 (hereinafter '940, as cited by the Applicant on the IDS filed 2/23/06. In regard to claim 1, '940 discloses a device for packaging and dispensing a cosmetic product comprised of a receptacle 4 containing a cosmetic product and a body comprised of a binder 3 and a plurality of particles 1 associated with the binder wherein the body defines a cavity visible to the naked eye (as described in the decision of rejection disclosed in the IDS filed 7/21/06), wherein the device is configured so that, at least during use the body is in contact with the cosmetic and at least some of the particles are in contact with the product and wherein the body is not in the form of a dip

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tube. In regard to claim 19, at least some of the particles are configured to release ions (see the abstract). In regard to claim 21, the product is at least one of a solid, powder, liquid or gel. In regard to claim 25, the body is loose in the receptacle (see Figure 3). In regard to claim 42, the device includes a dip tube (see Figure 3) and the body is separate therefrom.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-18, 20, 22-24, 31, 32, 35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over '940. Although the '940 reference does not clearly disclose the claimed materials, sizes, percentages and shapes, it is the Examiner's position that these various parameters are merely matters of design choice and optimization, especially since the Applicant has not placed any criticality on any of these parameters in the specification and repeatedly discloses that these limitations are not necessarily present in the device. For example, language such as "the binder *may* include an organic and/or mineral material" (see paragraph 009) is evidence that this limitation is merely a design choice and the binder can obviously be designed to have any suitable make up, as long as the device functions as intended. As made clear by the disclosure, the Applicant is not relying on these parameters for novelty, but is relying on the

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combination of a cosmetic/care product having a body therein wherein the body includes a binder and particles to enhance the product. As discussed supra, '940 discloses such a combination. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the various parameters defined in these claims can be imparted onto the '940 device without effecting the overall operation thereof.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
9/29/06